

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

Hearing date: September 1, 2015  
Hearing time: 11:00 a.m.

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IN RE:

CASE NO.: 11-48247-nhl

Marcel F Juste  
and Natacha Juste a/k/a Natacha Amilcar,

CHAPTER 13

Debtors.  
-----X

Hon. Judge: Nancy Hershey Lord

**NOTICE OF MOTION FOR RELIEF FROM THE AUTOMATIC STAY**

PLEASE TAKE NOTICE, that upon the application of Bank of America, N.A., the undersigned shall move this Court for an Order, pursuant to 11 U.S.C. §362(d), vacating the automatic stay to permit Movant, its successors and/or assigns, to enforce its mortgage on the Debtors' premises located at, 2037 Schenectady Avenue, Brooklyn, New York 11234 and for such other and further relief as is just and proper.

This Motion shall be heard at the United States Bankruptcy Court, Eastern District, 271 Cadman Plaza East, Courtroom# 3577 Brooklyn, New York, 11201 on September 1, 2015 at 11:00 a.m., or as soon thereafter as counsel may be heard.

PLEASE TAKE FURTHER NOTICE, that answering affidavits, if any, must be served so as to be received not later than seven (7) days before the hearing date of this motion.

Dated: Buffalo, New York  
July 16, 2015

FRENKEL LAMBERT WEISS  
WEISMAN & GORDON LLP

BY: 

Michelle C. Marans, Esq.  
53 Gibson Street  
Bay Shore, New York 11706  
(631) 969-3100  
Our File No.: 01-046654-B02

TO: Marcel F Juste  
Debtor  
2037 Schenectady Avenue  
Brooklyn, NY 11234

Natacha Juste  
a/k/a Natacha Amilcar  
Debtor  
2037 Schenectady Avenue  
Brooklyn, NY 11234

David Shaev, Esq.  
Attorney for the Debtors  
Shaev & Fleischman LLP  
1430 Broadway, Suite 1802  
New York, NY 10018

Marianne DeRosa  
Chapter 13 Trustee  
115 Eileen Way, Suite 105  
Syosset, NY 11791

U.S. Trustee  
Office of the United States Trustee  
271 Cadman Plaza East, Suite 4529  
Brooklyn, NY 11201

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CHAPTER 13

CASE NO.: 11-48247-nhl

Judge: Hon. Nancy Hershey Lord

**MOTION FOR RELIEF FROM THE  
AUTOMATIC STAY REGARDING REAL PROPERTY**

Bank of America, N.A., ("Movant") hereby moves this Court, pursuant to 11 U.S.C. §362, for relief from the automatic stay with respect to certain real property for the Debtors having an address of 2037 Schenectady Avenue, Brooklyn, New York 11234 (the "Property"), for all purposes allowed by law, the Note (defined below), the Mortgage (defined below), and applicable law, including but not limited to the right to foreclose. Attached hereto as **Exhibit A** is a background information form required by local rules. In further support of this Motion, Movant respectfully states:

1. A petition under Chapter 13 of the United States Bankruptcy Code was filed with respect to the Debtors on September 28, 2011.
2. A Chapter 13 plan was confirmed on September 10, 2012.
3. The Debtors have executed and delivered or are otherwise obligated with respect to that certain promissory note in the original principal amount of \$361,625.00 (the "Note"). A copy of the Note is attached hereto as **Exhibit B**. Movant is entitled to enforce the Note.
4. Pursuant to the certain Mortgage (the "Mortgage"), all obligations (collectively, the "Obligations") of the Debtors under and with respect to the Note and Mortgage are secured by the Property. A copy of the Mortgage is annexed hereto as **Exhibit C**.
5. All rights and remedies under the Mortgage have been assigned to the Movant

6. Note and Mortgage were modified pursuant to Loan Modification Agreement executed January 28, 2010. The Note and Mortgage were further modified by a second Loan Modification Agreement dated March 28, 2012 and executed by the Debtors on March 30, 2012. Copies of both Loan Modification Agreements are attached hereto as **Exhibit E**.

7. In response to a prior motion for relief filed by Movant on or around December 15, 2014, Debtors applied for loss mitigation. Movant withdrew the prior motion in light of the pending loss mitigation. Debtors' request for a loan modification was ultimately denied and as such, the current motion for relief has been filed.

8. Bank of America, N.A. services the loan on the Property referenced in this Motion. In the event the automatic stay in this case is modified, this case dismisses, and/or the Debtors obtain a discharge and a foreclosure action is commenced on the mortgaged property, the foreclosure will be conducted in the name of Movant. Movant, directly or through an agent, has possession of the Note. The Note is either made payable to Movant or has been duly endorsed.

9. As of June 30, 2015, the outstanding amount of the Obligations less any partial payments or suspense balance is \$438,216.15

10. The following chart sets forth the number and amount of post-petition payments due pursuant to the terms of the Note that have been missed by the Debtors as of June 30, 2015:

Number of Missed Payments	FROM	TO	Monthly Payment Amount	Total Amount Delinquent
2	11/1/2013	12/1/2013	\$2,292.01	\$4,584.02
12	1/1/2014	12/1/2014	\$2,460.60	\$29,527.20
6	1/1/2015	6/1/2015	\$2,386.04	\$14,316.24
Less post-petition partial payments (suspense balance):				(\$80.02)

Total: \$48,347.44

11. The estimated market value of the Property is \$360,000.00. The basis for such a valuation is "Schedule A". A copy of "Schedule A" is attached hereto as **Exhibit F**.

12. Cause exists for relief from the automatic stay for the following reasons:

(a) Movant's interest in the Property is not adequately protected.

(b) Post-confirmation payments required by the confirmed plan have not been made to the Movant.

WHEREFORE, Movant prays that this Court issue an Order terminating or modifying the stay and granting the following:

1. Relief from the automatic stay for all purposes allowed by law, the Note, the Mortgage and applicable law, including but not limited to allowing Movant and any successor or assigns to proceed under applicable non-bankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property.

2. That the Order be binding and effective despite any conversion of this bankruptcy case to another case under any other chapter of Title 11 of the United States Code.

3. For such other relief as the Court deems proper.

Dated: Buffalo, New York

*July 16*, 2015

Respectfully submitted,

Frenkel, Lambert, Weiss, Weisman & Gordon, LLP

BY: 

Michelle C. Marans, Esq.

53 Gibson Street

Bay Shore, New York 11706

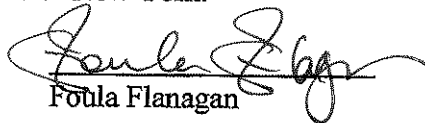
(631) 969-3100

Our File No.: 01-046654-B01


Marianne DeRosa  
Chapter 13 Trustee  
115 Eileen Way, Suite 105  
Syosset, NY 11791

U.S. Trustee  
Office of the United States Trustee  
271 Cadman Plaza East, Suite 4529  
Brooklyn, NY 11201

The above parties were served by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in a post office-official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

  
Foula Flanagan

Sworn to before me this  
16<sup>th</sup> day of July, 2015

  
Notary Public

**JESSICA SPIEGELMAN**  
Notary Public, State of New York  
No. 01SP6093750  
Qualified in Suffolk County  
Commission Expires June 9, 2019

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**ORDER TERMINATING AUTOMATIC STAY BY DEFAULT**

Upon the unopposed motion of Bank of America, N.A., dated July 16, 2015, seeking relief from the automatic stay and after a preliminary hearing held on September 1, 2015, it is

ORDERED, that the automatic stay, instituted upon the filing of the within bankruptcy case, is hereby terminated pursuant to 11 U.S.C. §362(d)(1) as to Movant's, its successors and/or assigns, lien interest in the premises described in said Motion as 2037 Schenectady Avenue, Brooklyn, New York 11234, including but not limited to foreclosure, eviction, loss mitigation, short sale offers and deed in lieu, and the movant shall account to this estate for any surplus proceeds realized after the sale.